

### REMARKS

Claims 1-6 and 53-68 are pending. Claims 1, 53, 64 and 67 are independent claims.

The Examiner has required applicants to submit a proposed drawing correction.

Applicants have submitted formal drawings. No new matter has been added.

The Examiner rejected claim 1-6 and 53-68 under 35 U.S.C. §101 as being directed to non-statutory subject matter. More specifically, the Examiner argues that "the claims lack any tie to the technological arts."

Applicants respectfully disagree. For example, claims 1 and 53 involve processes as defined in 35 U.S.C. §101. The term "process" as defined in 35 U.S.C. §101 means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

Claim 1 recites "receiving a message in a system for a new quote for a trading item." Clearly this recites statutory subject matter since a system is a physical piece of equipment. As is known to those skilled in this art, systems, such as computer systems, receive messages internally and externally.

Claim 53 recites, "in a network, receiving a message in a server for a new quote for a trading item." Clearly this also recites statutory subject matter as a message is received by a server residing in a network. The server, as well as components within the network, are physical pieces of equipment. As is known to those skilled in this art, servers in a network receive and process different messages.

Accordingly, claims 1-6 and 53-68 recite statutory subject matter under 35 U.S.C. §101 and the Examiner's rejection should be withdrawn.

The Examiner rejected claims 1-6 and 53-68 under 35 U.S.C. §112, second paragraph. More specifically, the Examiner argues that the word "system" in claim 1 is indefinite, the word "network" in claim 53 is vague and indefinite, and that in claim 53 the condition for setting the alert is unclear.

Claim 1 recites "receiving a message in a system for a new quote for a trading item." Applicant's "system," as described in the specification, is a system for monitoring market activity on any market for trading a selected set of items. As described in Random House Webster's Computer and Internet Dictionary, a system refers to "a combination of components working together. For example, a computer system includes both hardware and software. A Windows system is a personal computer running the Windows operating systems. A desktop publishing system is a computer running desktop publishing software." Applicants "system" monitors market activity. Accordingly, claim 1 is proper under 35 U.S.C. §112, second paragraph.

The Computer and Internet Dictionary defines "network" as a group of two or more computer systems linked together. Claim 53 recites, "in a network, receiving a message in a server..." Applicants' "network," as is known to those skilled in this art, is a group of two or more computer systems linked together. Accordingly, claim 53 is proper under 35 U.S.C. §112, second paragraph.

For convenience of the Examiner, applicants have attached copies of selected pages of the Computer and Internet Dictionary.

Claim 53 also recites, "generating an alert if a new quote is determined to represent a usual quote value." Thus, if the new quote represents a usual quote, an alert is generated. This is not vague nor indefinite and accordingly proper under 35 U.S.C. §112, second paragraph.

The Examiner uses a CNET article to reject claims 1-6 and 53-68 as having been anticipated and/or obvious. More specifically, the Examiner argues that the CNET article teaches "Micromodeling Associates and Unisys were involved in building and testing software known as Surveillance Delivery Real Time that monitors NASDAQ activity and produces alerts to usual activity."

Applicants respectively disagree that the CNET article renders the claimed invention anticipated and/or obvious. The content of the CNET article is non-enabling on its face. A "how to use" showing is essential in a patent or application or publication if it is to be enabling under 35 U.S.C. §112, first paragraph.

The CNET article is a non-enabling disclosure at least because it does not place the public in possession of the claimed invention and is thus defective as prior art. In re Brown, 329 F.2d 1006, 141 USPQ 245 (CCPA 1964). In order for the Examiner to be able to sustain a rejection based upon the CNET reference, he would be obliged to come forth with evidence that a person of ordinary skill in the art would be able to use his own knowledge, or the teachings of another reference combinable with the first, to successfully produce the claimed invention. The Examiner has presented no such evidence.

As applicants presume the Examiner to know, if the mere identification of a software application's name and function were considered to be sufficient to constitute both a description and an enabling disclosure of the software, it would be possible for an individual, even one who is untrained, to produce a fictional software application and list its functions, publish it, and effectively prevent others from securing patent rights on software applications that may never have been created and for which uses may never therefore have previously been conceived. See In re Wiggins, 488 F.2d 538, 179 USPQ 421 (CCPA 1973).

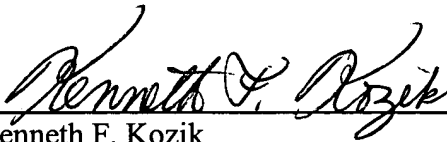
Accordingly, claims 1-6 and 53-68 are not anticipated or rendered obvious by the cited reference.

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Respectfully submitted,

Date: \_\_\_\_\_

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